UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1997/SR.29
9 December 1997

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-ninth session

SUMMARY RECORD OF THE 29th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 25 August 1997, at 3 p.m.

Chairman: Mr. BENGOA

later: Mr. MAXIM

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THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(b) APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF DETAINED JUVENILES AND THE JUDICIAL PROTECTION OF CHILDREN;

(c) GROSS AND MASSIVE VIOLATIONS OF HUMAN RIGHTS AS AN INTERNATIONAL CRIME;

(d) JUVENILE JUSTICE (continued)

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The meeting was called to order at 3.20 p.m.

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(b) APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF DETAINED JUVENILES AND THE JUDICIAL PROTECTION OF CHILDREN;

(c) GROSS AND MASSIVE VIOLATIONS OF HUMAN RIGHTS AS AN INTERNATIONAL CRIME;

(d) JUVENILE JUSTICE (agenda item 9) (continued)

(E/CN.4/Sub.2/1997/19 and Add.1, 20, 19 and 32; E/CN.4/1998/5 - E/CN.4/Sub.2/1997/39; E/CN.4/Sub.2/1997/NGO/7, 8, 20 and 27)

1. Mr. MEJIA (World Organization against Torture) said that the independence and impartiality of justice were under serious threat in a number of countries. In Peru, criminal and disciplinary sanctions might well be taken against judge Minaya Calle for having ordered the release of Mrs. Cáceres Hinostroza, who was being detained illegally. The judge herself, as well as members of APRODEH who had supported her, had recently received threats.

2. His organization was also deeply concerned about the situation of Mr. Kuenley Dorji, Chairman of the United Front for Democracy in Bhutan, who had taken refuge in India and whom the Government of Bhutan was trying to have extradited. He was likely to be tortured and sentenced to death if he was handed over to the Bhutanese authorities.

3. In Tunisia, guarantees of due process were not respected, as was clear from the trials of Khemaïs Chammari, Mohammed Mouadda and Hajib Hosni, as well as the detention of Moncef Marzouki without charge for several months. The torture of detainees was commonplace, and Mr. Ridha Khemiri had died on 25 July 1997 after a 40-day hunger strike to protest his detention without charge.

4. In Mexico, although the independence of the judiciary was guaranteed by law and despite the existence of an ombudsman and the prohibition of torture, the army, police and judicial police continued to indulge in practices such as arbitrary detention, the extortion of confessions under torture, forced disappearances and extrajudicial executions. (Detailed information on the subject is contained in the reports of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions (E/CN.4/1997/60/Add.1) and of the Committee against Torture (CAT/C/XVII/CRP.1/Add.4).)

5. In view of that situation, the Sub-Commission should invite States to ensure that their agents complied with national legislation and universally recognized international standards, and act upon the recommendations addressed to them by monitoring bodies established under international instruments.

6. Mr. SINGH DHILLON (Liberation) said that his organization was seriously concerned by the impunity enjoyed by security forces in a number of countries as a result of the introduction of de facto states of emergency, as had been noted by Mr. Despouy in his report on human rights and states of emergency (E/CN.4/Sub.2/1997/19 and Add.1). In India, for example, some 50,000 persons had died or disappeared over the previous 15 years in the State of Punjab, but only 140 police officers had been indicted. While Liberation welcomed the fact that nine police officers had recently been sentenced to life imprisonment for the murder of Bagicha Singh in 1993 and that the National Human Rights Commission had announced that it would conduct an investigation into the cremation of 25,000 Sikhs since the early 1980s, it considered that much remained to be done before impunity in the region was ended.

7. In the State of Manipur, the Central Government, under article 6 of the Armed Forces Special Powers Act which stated that no prosecution or legal proceedings were to be instituted without its agreement, had stopped the inquiry ordered by the State of Manipur to throw light on the role played by the Indian army in the summary execution of Mr. Kangujam Ojit. In the State of Assam, most of the crimes committed by the army, such as torture, rape and summary executions, remained unpunished. Neither United Nations special rapporteurs, nor the International Committee of the Red Cross nor yet the National Human Rights Commission were able to investigate such acts. Lastly, in Kashmir, the army had killed thousands of persons under the special powers conferred on it and very few prosecutions had been brought.

8. His organization called upon the Sub-Commission to request States to put an end to impunity, which was encouraged by the application of laws conferring emergency powers on security forces, and to resort to dialogue with a view to the peaceful solution of problems.

9. Ms. AULA (Franciscans International) said that her organization endorsed the view expressed by Mr. Joinet in his report on impunity (E/CN.4/Sub.2/1997/20) that the State was under an obligation to investigate violations, to prosecute the perpetrators and, if their guilt was established, to punish them (paragraph 27). Her organization welcomed the establishment of tribunals at the international level for the former Yugoslavia and Rwanda, as well as the proposed creation of an international criminal tribunal, which demonstrated the importance attached to efforts to curb impunity.

10. In many countries impunity was the result of the failure of political and judicial authorities to fulfil their obligations. That was so in the case of Colombia, where almost one half of the acts of violence, and particularly political assassinations, committed between January and March 1996 were attributable to the army or the police. Paramilitary forces were allegedly responsible for 80 per cent of all political assassinations and more than one third of the disappearances recorded during that period. The escalation of so-called "faceless justice" in that country was also a source of deep concern. Her organization had taken note of the Colombian Government's decision to reform the military penal code so as to allow gross violations of human rights to be investigated by the civil justice system, and hoped that that would help to put an end to the violence being experienced by the Colombian people and to restore guarantees of due process.

11. In conclusion, her organization hoped that the Sub-Commission would ensure that all member States implemented the principles and guidelines listed by Mr. Joinet in his report for the protection and promotion of human rights by curbing impunity.

12. Ms. SILAWAL-GIRI (International Progress Organization) drew attention to the problem of terrorists and mercenaries who were supported and protected by certain States and who, in other States and in the name of religion, indulged in assassinations and killings, mainly of women and children. The States targeted by such terrorists included Saudi Arabia, France, Algeria and India, and in particular Jammu and Kashmir. The perpetrators of such acts of violence must be brought to justice.

13. Moreover, if the cause of democracy and human rights was to be served, the independence of the judiciary must be strengthened and respect for the rights of detainees ensured, particularly through the right to a fair trial. Yet that right was not being respected in Bhutan, which had an absolute monarchy and where the judiciary was controlled by the Government, and her organization urged the Sub-Commission to take the necessary steps to ensure that Mr. Dorji, a democratic opponent of the Bhutanese regime who had taken refuge in India, was not extradited to Bhutan where he would probably be tortured and sentenced to life imprisonment or to death.

14. Mr. MARENDAZ (Pax Christi International) said that impunity deprived human rights of their substance, encouraged violence and incited the victims to do justice themselves. For that reason, when a State decided to grant amnesty to persons responsible for human rights violations it should do so only on condition that they respected the right of the victims to know the truth and to obtain compensation.

15. The impunity enjoyed by the murderers of Professor Kazem Radjavi was of direct interest to the members of the Sub-Commission, since a number of experts had known that ardent defender of human rights in his country, namely, Iran. He noted that the French Government had decided to expel to Iran two of the Iranians suspected by the Swiss courts of having committed that murder, instead of extraditing them to Switzerland as it should have done in accordance with an extradition treaty. Furthermore, in April 1997, a German court had established that the murder of four Iranian Kurds in Berlin in 1992 had been masterminded at the highest levels of the Islamic Republic of Iran. It was in that way that the perpetrators of those murders had remained unpunished.

16. In El Salvador, too, impunity remained the rule. The Truth Commission established under the 1992 peace agreements to investigate human rights violations committed during the civil war had been unable to submit a complete report and Mrs. Velasquez de Aviles, the Government Procurator responsible for instituting proceedings against the persons suspected of having committed human rights violations had received death threats and funds earmarked for her activities had been reduced. Moreover, Major d'Aubuisson who had been implicated in the murders of Mgr. Romero in 1980 and of six Jesuits at the Central American University in 1989 still held important posts in the country's administration.

17. In Guatemala, the adoption of the National Reconciliation Law under which amnesty was granted for all crimes committed during the civil war with the exception of genocide, acts of torture and forced disappearances, suggested to many citizens that the right of the victims to justice had been violated. Furthermore, nothing had been done to restore the rights of indigenous populations and compensate them for the suffering they had endured and their material losses.

18. The fact that the persons mainly responsible for the war crimes committed in the former Yugoslavia were still free was also a source of concern. In that connection his organization recalled that all States were under an obligation to cooperate with the International Criminal Tribunal for the Former Yugoslavia with a view to arresting alleged war criminals and bringing them to trial.

19. His organization welcomed the fact that, in France, Maurice Papon had been charged with complicity in crimes against humanity for having participated in organizing the deportation of Jews to Nazi concentration camps between 1942 and 1945; it was unfortunate, however, that he had never been charged, as préfet de police of Paris, with having personally directed the police operations of October 1961, which had resulted in 200 dead and 2,300 injured among the Algerian population of the French capital.

20. Lastly, his organization welcomed the fact that, on 3 July 1997, a Palestinian military court had found three officers of President Arafat's bodyguard guilty of participating in the murder of a detainee. Nevertheless, it called upon Mr. Arafat to commute their death sentences to terms of imprisonment.

21. Ms. MILLI (International Association against Torture) said that police officers in the United States often violated the rights of persons who had been arrested. In New York, they had killed over 100 civilians during the previous five years. Keshaw Watson, a young Black of 24, had been killed by the police while sitting unarmed in his car, and Kevin Cedeno, a young Dominican of 16, had been shot in the back while carrying a machete. The perpetrators of those acts had not been indicted. On 9 August 1997, Abner Louima, a Haitian immigrant, had been taken to the emergency room of a hospital and operated on 90 minutes after being arrested by the police. In St. Petersburg (Florida) a police officer had, during a routine traffic stop, shot Tyron Lewis, an unarmed young Black of 16; he had not been indicted.

22. Such acts were not surprising since it was known, for example, that the CIA had instructed members of the armed forces of Latin America's most repressive regimes in methods of torture. The United States had, however, never been held accountable for the human rights violations committed by those who had been trained to engage precisely in those activities. Her organization therefore called upon the Sub-Commission to study cases of violations in the United States when it examined the question of impunity, and also to investigate prison overcrowding in the United States and the torture of detainees in private prisons. It should also look into the situation of political prisoners in the United States, and in particular that of Abdul Haqq.

23. In conclusion, her organization invited the Sub-Commission to request the Republic of Korea to repeal the National Security Law, which was the source of numerous human rights violations, and to release political prisoners who had been detained for a long time under that Law.

24. Ms. KEYHAVI (International Falcon Movement) drew attention to the Chastisement and Preventive Punishment Law (Ta'zirat) which had been incorporated into Iran's Islamic punishment legislation in July 1996. Article 498 of that Law, for example, stated that any person who formed a political organization deemed to be destroying the security of the country could be punished by 2 to 10 years' imprisonment, and that an association of two or more persons, regardless of its objective, was considered to be an organization. Insults against the leaders of the country or any representative of the three branches of government were also punishable by imprisonment, lashes or fines. That provision constituted a violation of freedom of speech since the term insult was not defined by the law.

25. The legislation in question was based on the theory propounded by Mr. Khomeini according to which absolute authority must be exercised over the populace. Furthermore, since politics was the reserve of the clergy, elections and the right to vote were meaningless and had no real impact on the situation of the people. It was in that context that the most elementary internationally recognized standards were being violated. During the previous few weeks alone some 30 executions had been officially announced. A woman of 20 had been almost stoned to death, an Iranian lawyer had been secretly executed and three members of an Iranian Kurdish group had been assassinated in Iraqi Kurdistan by agents of the Ministry of Intelligence. The gravity of the situation in Iran called for strong action by the international community.

26. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that the history of Latin America revealed that the existence of military courts, particularly when they tried cases involving human rights violations, was incompatible with the right to justice and the rights of the victims, which could be guaranteed only by the independent and impartial administration of justice. The case of Mariella Barreto, a member of the intelligence service, whose mutilated body had been discovered in March 1997 and whose murderers had never been found, demonstrated that victims and their families were unable to obtain justice before the military courts and were therefore also denied any possibility of compensation. Furthermore, by encouraging impunity, military courts promoted the perpetration of additional terrible crimes by the criminals who had been released under an amnesty law. Her organization accordingly called upon the Peruvian Government, as the Human Rights Committee, the Inter-American Commission on Human Rights and the European Parliament had already done, to respect its human rights obligations.

27. Mr. PAPPALARDO (France-Libertés: Fondation Danielle Mitterrand), referring to resolution 1997/16 of the Commission on Human Rights, which stated that impunity continued to be the main reason for the continuation of human rights violations, said that the lack of the judiciary's independence also contributed to the perpetuation of impunity. For example, it was surprising to note that the Peruvian Government had appointed a military man as head of the judiciary, particularly as in June 1997 he had ordered the dismissal of three judges of the Public Law Chamber of the Lima Regional Court

who had granted four applications for a writ of habeas corpus. His organization also condemned the torture and ill-treatment of members of opposition parties, journalists and even members of the Army Intelligence Service (SIE), such as Mrs. Leona La Rosa, who had become a paraplegic after being tortured by her SIE colleagues. A large number of persons had been unjustly accused of terrorism and were being held without proof in Peru. The application of a Decree-Law which defined terrorism in a flexible manner and resulted in the detention of innocent persons had already been roundly condemned by the Human Rights Committee in July 1996. His organization therefore urged the Sub-Commission to call upon the Peruvian Government to respect its obligations towards persons who had been detained, to undertake serious investigations, to bring proceedings against those responsible for human rights violations and to grant compensation to the victims in accordance with the Human Rights Committee's recommendations.

28. His organization was also concerned by the violation of the human rights of detainees in the Comoros. In fact the situation seemed to have deteriorated since President Taki's assumption of power in March 1996, as was demonstrated by the execution of Mr. Tawfik and Mr. Saïd Ali Mohamed, who had been denied any possibility of recourse. It therefore asked that three persons who had been sentenced to death (Mohamed Sahali, Machallah and Youssouf Hamadi) should be allowed to appeal their sentence before an independent and impartial higher court.

29. He once again drew the Sub-Commission's attention to the terrible situation of political prisoners in Bahrain and to the almost systematic violation of the human rights of detainees under the 1975 State Security Law, which authorized the Minister of the Interior to detain political militants for up to three years without trial. Their confessions, usually extracted by means of physical as well as psychological torture, brought them before the State Court of National Security - a court of special jurisdiction - whose judgements were final and without appeal, in violation of the most elementary right to a fair trial. Furthermore, since March 1996, its jurisdiction had been extended to cover what were usually regarded as ordinary law crimes. It was for that reason that his organization welcomed the Sub-Commission's adoption of draft resolution E/CN.4/Sub.2/1997/L.8, and hoped it would pay particular attention to the situation of detainees, and especially political detainees in Bahrain.

30. The Sub-Commission should also examine the question of minors detained and very often ill-treated in Chinese prisons. The growing number of such young detainees during the past few years was particularly alarming as was clear from the report of the Tibetan Centre for Human Rights and Democracy. It should also be borne in mind that the Panchen Lama, who was now eight years of age, had been abducted by the Chinese authorities in May 1995 and was still arbitrarily detained. His organization requested the Chinese authorities to reveal where he was being detained and to release him, as well as all other minors arbitrarily detained in China, immediately.

31. Ms. CHOKEY (Worldview International Foundation) said that her organization was deeply concerned about the human rights of detainees, and in particular juveniles, throughout the world, particularly when they were sentenced for political reasons. That was happening in Tibet, where the

Chinese authorities were violating the rights of Tibetan children despite the fact that China was a party to the Convention on the Rights of the Child and had, under its article 4, adopted laws for the protection of minors. The presumption of innocence principle embodied in article 40, paragraph 2 of the Convention had been incorporated neither in China's legislation on the protection of minors, nor in its criminal law, nor yet in its procedural law. The Committee against Torture had expressed doubts about China's respect for international standards relating to legal process, since children were detained in labour camps simply on the basis of an administrative detention order. Torture was common in Tibetan prisons, and she cited the case of two adolescents who had died as a result of being tortured during their detention. There were allegedly 1,018 political prisoners in Tibet, most of them detained arbitrarily. The youngest was a child of 8, namely, the Panchen Lama, and the Committee on the Rights of the Child, the Working Group on Enforced or Involuntary Disappearances and the Commission's Special Rapporteur on religious intolerance had expressed concern about his distressing situation.

32. Her organization therefore urged the Chinese authorities to provide proof, as requested by the Commission's Working Group on Enforced or Involuntary Disappearances, that the boy and his parents had indeed requested "protection" from China and that they were living a "normal life". Moreover, the Sub-Commission should pay greater attention to the general deterioration of the human rights situation in Tibet and in particular to the administration of justice and the increase in the number of juvenile and arbitrary detentions. In that regard, it hoped that the Commission's Working Group on Arbitrary Detention would study the situation in Tibet when it visited China.

33. Mr. JOINET, introducing the report of the Sessional Working Group on the Administration of Justice (E/CN.4/Sub.2/1997/21), said that consideration of the declaration on the protection of all persons from enforced disappearance, which was to be used as a basis for a draft convention on the subject, had been deferred for one year since for financial reasons it had been impossible to hold the planned meeting of experts. With respect to the deprivation of the right to life, Mr. Guissé, in submitting his annual report indicating which countries maintained or had abolished the death penalty, had emphasized the need to adopt specific measures to protect vulnerable groups. The Working Group hoped that the document would be publicized to a greater extent in future. Experience had shown that the suspension of the right of habeas corpus was probably the most frequent cause of human rights violations committed not only during periods of emergency but also in crisis situations, and the Working Group had therefore decided, in accordance with Mr. Weissbrodt's proposal, to request the Human Rights Committee to reaffirm, in a new general comment on article 4 of the International Covenant on Civil and Political Rights, that the right of habeas corpus was non-derogable. As for the measures that could be taken to give full effect to the Convention on the Prevention and Punishment of the Crime of Genocide, the question was whether a general updating of the reports submitted should be undertaken or a more pragmatic approach adopted. With respect to juvenile justice, a subject on which Mrs. Gwanmesia had presented a working paper, the question was whether a purely criminal approach should be adopted or whether the legal protection of young persons should also be covered. On the subject of the privatization of prisons, the Working Group had considered that the Sub-Commission could usefully appoint one of its members to undertake an

in-depth study of the matter. Lastly, the Working Group had decided to recommend that the Sub-Commission should transmit to the International Law Commission the working paper prepared by Mr. Chernichenko entitled "Recognition of gross and massive violations of human rights perpetrated on the orders of Governments, or sanctioned by them, as an international crime" (E/CN.4/Sub.2/1997/29), with a view to soliciting suggestions.

34. Mr. FIX ZAMUDIO said that the Organization of American States was dealing with the same questions as the Sessional Working Group on the Administration of Justice, for it had adopted the Inter-American Convention on Forced Disappearance of Persons, which was already in force, and approved a protocol to the American Convention on Human Rights on the prohibition of capital punishment. Moreover, the Inter-American Commission on Human Rights had addressed recommendations to the Government of the United States in which it expressed the view that the execution of persons who had been minors at the time they committed the offences for which they were sentenced constituted a violation of the principles of the American Declaration on the Rights and Duties of Man.

35. Referring to the Working Group's report, he said he supported Mr. Weissbrodt's proposal that the Human Rights Committee should state clearly in a new general comment on article 4 of the Covenant that habeas corpus and amparo were non-derogable rights, even in periods of emergency. He pointed out that Mr. Despouy, the Special Rapporteur on the question of human rights and states of emergency, had made a similar recommendation in paragraph 187 of his report (E/CN.4/Sub.2/1997/19).

36. The Working Group must continue its work. In future, it could look into the question of the many instruments and mechanisms that had been established recently at the national level to protect human rights, for unfortunately application of the principle that all domestic remedies must be exhausted before a remedy was sought at the international level, continued to present problems. The exceptions provided for in international instruments, as in the case of the denial of justice, should therefore be supplemented by international case law and particularly that of the Inter-American Court of Human Rights. Apart from traditional remedies such as amparo and habeas corpus, other devices had been developed, such as the mandato de segurança in Brazil, the remedy of protection in Chile and the acción de tutela in Colombia, which also deserved to be examined, as well as other possibilities of unconstitutionality actions before the courts. The recurso de habeas data, introduced in the Brazilian Constitution of 1988, was designed to protect individuals from the possible adverse impact of the computerization of data on their private lives. Other Latin American and western European countries had taken similar measures, and the Scandinavian institution of Ombudsman had also been widely adopted. Yet those mechanisms did not replace legal procedures, which they should merely support and supplement. Their value, even beyond frontiers, was being increasingly recognized, as was clear from the establishment within the European Union as well as the Andean Community of the post of parliamentary commissioner.

37. The Working Group could also examine the question of the interests of indeterminate and unorganized social groups which were protected by certain administrative and legal provisions, and in relation to contemporary factors

resulting from globalization, such as protection of the environment or of the artistic and cultural heritage. Other trends were emerging in connection with political rights, such as the participation of judges in the work of electoral decision-making bodies and the establishment of electoral tribunals, thereby running counter to tradition which attached greater importance to the role of political bodies in that respect. Lastly, the primacy of international law in human rights matters was being increasingly recognized by the domestic legal systems of States; the reform of the Argentine Constitution in August 1994 had been a milestone in that respect. The provisions of international human rights instruments were also being applied to a greater extent in domestic law, either directly or through the case law of international bodies.

38. Nevertheless, many obstacles still hampered the acceptance by countries of the recommendations of committees and other bodies dealing with human rights and the application of decisions handed down by the competent courts. Further efforts must therefore be made to develop a suitable domestic legal framework that would make it possible to give effect to such recommendations.

39. Mr. CHERNICHENKO, introducing his working paper on the recognition of gross and massive violations of human rights perpetrated on the orders of Governments or sanctioned by them as an international crime (E/CN.4/Sub.2/1997/29), said that its main purpose was to increase the effectiveness of efforts to curb human rights violations.

40. It was unquestionable that the most dangerous human rights violations were gross and massive violations committed on the orders of Governments or sanctioned by them, and it was precisely those violations that were targeted by the draft declaration annexed to the working paper. However, definitions of international crimes and crimes against international law must first be defined more clearly. The International Law Commission had, in its work, emphasized the difference between a crime committed by a State and one committed by an individual, even if the latter was acting on behalf of the State, indicating that an international crime was not a crime under criminal law. The term "international crime" should therefore be used only in respect of the acts of States directed against the international community and constituting serious violations of international law. Since the International Law Commission was examining general questions of responsibility, he had confined his analysis to those aspects that were connected with human rights violations and that had to be clarified if they were to be regarded as international crimes. It should also be borne in mind that States did not incur international liability for all human rights violations, since they did not invariably constitute violations of an international obligation. If the State had not failed to fulfil one of its international obligations the question of the liability of the perpetrators of the act in question could then arise within that State. If, on the contrary, the State had failed to fulfil its international obligations, the human rights violation was far from being so serious as to be regarded as an international crime.

41. Referring to the proposed draft declaration, he explained to Mr. Boutkevitch who, at the previous session had wondered about the use of the word "Government" in the text, that he had used the term to designate a country's political leaders and that the word "State" could just as easily be used in its stead. He also wished to dissipate any fears that the document

submitted duplicated the work of the International Law Commission. That body was not dealing with the question of human rights violations but with that of the responsibility of States, on the basis of draft articles. Nor did the proposed draft declaration deal with the question of the criminal liability of certain individuals but with a category of human rights violations for which individuals, having acted on behalf of the State, incurred liability. Its purpose was therefore to proclaim a principle parallel to that of criminal law, according to which if it was found necessary to bring proceedings against an individual for murder, it must first be established that a crime had been committed, after which the wheels of the liability machinery could be set in motion. If the State had to assume, in respect of gross and massive violations of human rights, the same responsibility as for an act of aggression, for example, it must first be established that it had committed violations of international law equivalent to aggression, namely, an international crime.

42. In conclusion, he hoped that the draft declaration which he had proposed and which had enjoyed broad support in the Working Group, would be transmitted to the International Law Commission for comment.

43. Mr. Maxim took the Chair.

44. Mr. GUISSE thanked Mr. Joinet, the Chairman-Rapporteur of the Sessional Working Group on the Administration of Justice and the Question of Compensation, for the extremely comprehensive report he had submitted on his Group's work.

45. With a view to the preparation of his own report on the question of the death penalty, he requested Governments and non-governmental organizations (NGOs) in particular to transmit to him during the coming year, through the Centre for Human Rights, any relevant information on capital punishment actually taking place, on pardons granted or on substitution penalties, as well as on methods of execution (which, as was well known, were barbaric in certain cases). He also thanked the Centre for Human Rights, Amnesty International and the International Commission of Jurists for the documents which they had communicated to him and which would help him in preparing his important study.

46. Ms. PEREZ DUARTE (Observer for Mexico) said that the documents before the Sub-Commission on the item under discussion confirmed the importance of the administration of justice in a State governed by the rule of law. One of the new Mexican Government's primary concerns had been precisely to strengthen the effectiveness and independence of the system for the administration of justice under a new body, namely, the Federal Judicature Council. Action had also been taken to improve the training of the staff of the Government Procurator's Office and the judicial police, among others. Moreover, efforts had been made since 1995 to rid the system for the administration of justice of persons responsible for abuses and recently a broad reform of the Attorney-General's Office had been undertaken. At the same time, the authorities were continuing their efforts to curb organized crime and violence. Former officials involved in cases of that nature had recently been sentenced to terms of up to 26 years' imprisonment and judges and magistrates had been investigated.

47. Those measures taken at the legal level had been accompanied by others at the social level, with the establishment of centres providing assistance to victims of family violence and sexual abuse and to the families of disappeared persons. In 1996, 3,835 detainees had been released on parole and seven inter-disciplinary working groups were at present examining the case files of over 18,000 other detainees. Lastly, Mexico had introduced a national programme for the training of penitentiary personnel as well as programmes for the reintegration of detainees in society. The Sub-Commission's work on the right to habeas corpus and amparo were of particular interest to Mexico, where the latter remedy was institutionalized.

48. She wished to make three comments concerning the points made by the representative of International Educational Development: first, perpetrators of torture did not enjoy complete impunity in Mexico; secondly, all Mexican bodies dealing with human rights agreed that the number of cases of torture was declining; and thirdly, the Commission's Special Rapporteur on Torture had visited Mexico at the Government's invitation and had been able to do his work there without any interference. Even if in Mexico, as elsewhere, representatives of the authorities sometimes abused their functions, the country possessed institutional machinery and effective legal remedies designed to combat human rights violations and ensure the rule of law.

49. Mr. KAVSADZE (Observer for Georgia) said that, on 21 July 1997, 50 Georgians who had been sentenced to death had been amnestied by the President. No death sentence had been carried out since February 1995, even in the case of political opponents and persons sentenced for crimes connected with ethno-political conflicts. He was well aware of the problem since he had been his country's Minister for Human Rights and International Relations and was convinced that capital punishment should no longer be applied. Georgia's penitentiary system had been under the control of the civil authorities since 1994, the prison regime had been liberalized and prisoners were completely free to contact their lawyers. An improvement in their conditions of detention had been reported by representatives of international organizations and NGOs. Those humanitarian measures demonstrated that Georgia was well on the way to democracy and that fact represented a success not only for the State but also for the international community as a whole.

50. The post of Ombudsman for personal freedoms and human rights had been established in order to promote human rights in general. The incumbent was elected by Parliament for a period of five years and the freedoms of the individual were guaranteed under the Constitution. The period of pre-trial detention had been reduced from 18 months to 9 months and the presumption of innocence principle was applied. Legal proceedings had been brought against persons implicated in acts of genocide or ethnic cleansing and their cases had been disposed of. The Georgian authorities invited international human rights bodies, and in particular the Sub-Commission, to look into the matter. They also supported the idea of establishing an international criminal court, since no one should enjoy impunity. However, the situation of the 350,000 persons who had been displaced within Georgia five years previously owing to the conflicts he had referred to was still difficult, and the results of the measures taken to solve the problem, especially by the United Nations Secretary-General, had not been as positive as had been hoped.

51. In conclusion, he said that Georgia supported the idea of a draft declaration on the recognition of gross and massive violations of human rights perpetrated on the orders of Governments or sanctioned by them as an international crime, as well as that of establishing a working group or other mechanism to facilitate the return of refugees to their homes in safety.

52. Mr. MORJANE (Observer for Tunisia), in commending the quality of the studies carried out under agenda item 9 by members of the Sub-Commission, urged them to pursue their work on the subject and to cooperate further with States with a view to the implementation of its recommendations.

53. Tunisia had on many occasions demonstrated its attachment to the noble values of justice and equity as well as its respect for the primacy of the law and the principle of the independence of the judiciary, which was embodied in article 65 of the Tunisian Constitution. Moreover, the Head of State had quite recently reaffirmed his determination to combat injustice, disorder, laxism, as well as other ways in which power was abused or community property placed at risk. Tunisian magistrates were strongly urged to use pre-trial detention only as an exceptional measure, to ensure that persons in pre-trial detention were brought to trial rapidly and, as far as possible, to impose suspended sentences rather than prison sentences for offences punishable by a short term of imprisonment. Moreover, since 1987 the Higher Institute of Magistrature had been providing theoretical and practical training, concentrating on human rights, to members of the judiciary. The authorities had also been making special efforts to bring the courts and justiciable persons closer together. New courts at various levels, as well as legal guidance and citizen contact offices, had been established in the country. Tunisia also attached great importance to the role played by court officers and especially lawyers. Furthermore, at the same time as such judicial reforms were being carried out, Tunisia had in 1988 adopted regulations ensuring that prisons were up to international standards. Conditions in detention centres were verified by two separate bodies, namely, the General Inspectorate of the Ministry of the Interior and the General Inspectorate of Prisons. Furthermore, in June 1996, the President of the Republic had visited the civil prison of Tunis to acquaint himself personally with conditions of detention and programmes for the reintegration of prisoners in society.

54. Governments and experts had stated that the Sub-Commission should remain a forum for reflection and constructive dialogue on the best ways of promoting human rights in the world, and in that connection his delegation paid tribute to the NGOs - the active elements of civil society - which were usually objective and impartial in their examination of human rights questions. However, two of them at least had exaggerated the situation of human rights in Tunisia and tried to mislead the Sub-Commission by making groundless allegations about a country known for its political stability, its economic development, its openness and its unswerving attachment to the cause of human rights. The fact that a member of one of those NGOs had subsequently contacted the Tunisian delegation in an attempt to correct what had been said proved that such allegations lacked credibility. On the question of conditions of detention in Tunisia, he said that Mr. Rachid Oudriss, Chairman of the Higher Committee for Human Rights and Fundamental Freedoms in Tunisia, had been commissioned by the President of the Republic to visit prisons without prior authorization and had found that conditions of detention were in

conformity with international standards. He added that, in Tunisia, nobody could be arrested or tried if he had not committed a punishable crime or offence. In conclusion, he urged the NGOs to display due objectivity in their statements and to support the efforts made by States to promote human rights.

55. Mr. ERMAKOV (Observer for the Russian Federation) said that the question of freedom lay at the heart of the concept of human rights and that the State, by legally depriving a person of his freedom, directly affected the exercise of his fundamental rights. The difference between democratic regimes and dictatorial regimes was due to their approach to the use of punishment. The repression of dissidents was often accompanied by a lack of adequate legal guarantees for the individual and the disproportionate and arbitrary use of the State's power to deprive him of his freedom. In the Russian Federation, the weakest link in the administration of justice was the penitentiary system; that was explained by decades of totalitarianism, difficult economic conditions and complex patterns of criminality.

56. Unfortunately, the reform of the judiciary had not yet been completed and it was not uncommon for persons still to be held in pre-trial detention in the absence of any court order. One of the objectives of the reform was to do away with overcrowding in prisons. In any event, the authorities were working tirelessly on the preparation of new legislation reflecting international legal standards. The Federal Law on the pre-trial detention of persons accused of an offence or a crime authorized the release of suspects on the expiry of a period that it laid down. Furthermore, adoption of the new Penal Code had resulted in the repeal of the Presidential Decree of 14 July 1994 on measures to be taken to protect the population against organized and similar forms of crime which had been widely criticized at the international level since it authorized the pre-trial detention for a period of 30 days, without charge and without a court order, of any person suspected of having committed a serious crime. Lastly, the President of the Russian Federation had taken steps to amnesty 500,000 detainees who had been found guilty of minor offences. The reform of the penitentiary system and judiciary was therefore well under way. In conclusion, he expressed his gratitude to the Sub-Commission which was contributing to the adoption of standards - corresponding to international standards - in respect of the administration of justice and the human rights of detainees in his country.

57. Mr. AKRAM (Observer for Pakistan) drew attention to the case of Mohamed Bhat, who was being detained illegally by the Indian security forces in Kashmir. Mohamed Bhat, who was 80 years of age, belonged to a political party in Kashmir and had already been detained three times in 1997 quite arbitrarily and without any charges being brought. On 28 July 1997 he had been arrested once again as he was preparing to leave for Geneva to attend the Sub-Commission's present session; since then there had been no news of him. Concern about him was increasing, particularly as in March 1996, Jalil Andrabi, another human rights militant, had died in custody, and there was every reason to fear that Mr. Bhat would meet with the same fate. He vigorously condemned the repression practiced by the Indian occupation forces in Kashmir which constituted a major obstacle to the continuation of the talks embarked upon between India and Pakistan on the initiative of the Pakistan authorities. In conclusion, he appealed to the Indian authorities to recognize the right of the people of Jammu and Kashmir to self-determination.

Statements in exercise of the right of reply

58. Mr. AL-NOMAN (Observer for Yemen) said that he was obliged to exercise his right of reply because of the unfounded allegations made by the representative of War Resisters International, who was none other than a member of the forces of repression of the former People's Democratic Republic of Yemen and one of those mainly responsible for the massacre of 17,000 innocent persons that the international community still remembered. He reaffirmed his Government's deep attachment to democracy and human rights and said that the democratic elections held on 27 April 1997 had reflected the spirit of pluralism prevailing in the country and the entire world and demonstrated the impartiality of the electoral process.

59. Mr. GETAHUN (Observer for Ethiopia), referring to the statement by the representative of the International Movement for Fraternal Union Among Races and Peoples who had engaged in scurrilous attacks against his country, pointed out for the benefit of the Sub-Commission that he was the leader of an illegal political organization in Ethiopia that was trying to pass itself off as an organization for the protection of human rights.

60. He explained that Mr. Assefa Maru, who had become the leader of a clandestine organization called the Ethiopian Patriotic Front, had died after refusing to surrender when the police were arresting the leaders of that organization, which was plotting to overthrow the constitutional order, destroy economic establishments and assassinate a number of high officials.

61. As for the question of the administration of justice and efforts to curb impunity, he recalled that former officials of the National Military Council or Dergue were at present being tried for genocide, that the trial had earned wide international support and had been welcomed as the first trial of its kind since the Nuremberg trials.

FREEDOM OF MOVEMENT

(a) THE RIGHT TO LEAVE ANY COUNTRY, INCLUDING ONE'S OWN, AND TO RETURN TO ONE'S COUNTRY, AND THE RIGHT TO SEEK ASYLUM FROM PERSECUTION;

(b) HUMAN RIGHTS AND POPULATION DISPLACEMENTS (agenda item 10) (E/CN.4/Sub.2/1997/22 and 23)

62. Mr. BOUTKEVITCH, introducing his working paper on the right to freedom of movement and related issues (E/CN.4/Sub.2/1997/22), prepared in accordance with Sub-Commission decision 1996/109, said he had been asked to prepare a working paper on the content of the right to freedom of movement, its implementation and the obstacles to realization and also to study population movements and displacements, the right to leave one's country and to return to one's country and the right to seek and enjoy asylum. That list of related issues could be extended by adding those mentioned in Sub-Commission resolution 1996/9, namely, the right of everyone lawfully within the territory of a State to liberty of movement and freedom to choose his or her residence, the prohibition of arbitrary deprivation of the right to enter one's own country and the principle of non-refoulement.

63. Summarizing the background of the question, he recalled that in 1962 Mr. Ingles had submitted to the Sub-Commission his "Study of discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country" and had proposed the "Draft principles on freedom and non-discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country". For a number of years, the Commission on Human Rights had postponed the discussion of the agenda item relating to the study. It had eventually considered it in 1973, but failed to take any substantive decision. At its thirty-fifth session, the Sub-Commission had requested Mr. Mubanga-Chipoya to prepare "An analysis of current trends and developments in respect of the right of everyone to leave any country, including his own, and to return to his country, and to have the possibility to enter other countries, without discrimination or hindrance, especially of the right to employment, taking into account the need to avoid the phenomenon of the brain drain from developing countries and the question of recompensing those countries for the loss incurred, and to study in particular the extent of restrictions permissible under article 12, paragraph 3, of the International Covenant on Civil and Political Rights." The Sub-Commission had considered the report and the draft declaration at its fortieth session and, at its forty-second session, had decided to establish a sessional open-ended working group with a view to preparing a revised version of the draft declaration. The Working Group's report had been transmitted in 1991 to the Commission on Human Rights which had taken no decision on the subject. The question of freedom of movement had therefore been under consideration by the Sub-Commission for 45 years.

64. It would therefore seem that the time had come to prepare a new study on the right to freedom of movement and related issues because conditions had changed since the last special rapporteurs had completed their work: international relations were quite different, some of the conclusions of previous special rapporteurs had proved to be too optimistic, and a number of problems that had apparently been resolved had to be taken up once again. Similarly, the list of the rights in question had also changed considerably as compared with the original version for whereas initially it had been a question of the individual human right to leave his country, including one's own, and the right to return to one's country, collective as well as individual rights had since been studied, and not only in connection with the problem of leaving and entering one's country. It would therefore be desirable to carry out a new study on the basis of a mandate which should not, in his view, extend beyond the limits of articles 12 and 13 of the International Covenant on Civil and Political Rights.

The meeting rose at 6.10 p.m.